



July 10, 2000

Mr. Randall L. Patterson
City Attorney
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059

OR2000-2576

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136906.

The City of Brenham (the "city") received a request for information which you construe as asking for all files regarding the requestor that involve a criminal investigation. You have submitted information to this office for review which you contend is representative of the responsive information.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You contend that "some of the information contained in the Police Department's file is rendered confidential by the Rules of Civil Procedure, the Rules of Criminal Procedure or the Rules of Criminal Evidence." However, discovery and evidentiary privileges do not create confidentiality for purposes of section 552.101. Open Records Decision No. 575 (1990). Section 552.101 also encompasses the common law right to privacy. However, privacy interests arise only in the context of a particular individual vis `a vis others, and are not implicated where only the person himself is concerned. Open Records Decision No. 481 (1987). Where a person asks a governmental body only for information about himself, no privacy interest arises. *Id.*, see also Gov't Code § 552.023. In this case, the requested information apparently implicates only the privacy

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

rights of the requestor. We conclude that the submitted information may not be withheld under section 552.101 of the Government Code.

Section 552.103 of the Government Code excepts from disclosure information “relating to litigation of a civil or criminal nature, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.” Gov’t Code § 552.103. You apparently contend that the subject information relates to a criminal prosecution which resulted in the conviction of the requestor. However, neither the city, nor any employee of the city is a party in that prosecution. A governmental body may assert the litigation exception for information that a district attorney determines relates to a pending criminal case. Open Records Decision No. 469 (1987). However, you have provided no such representation by a prosecuting attorney. We conclude that you have not shown how section 552.103 of the Government Code excepts the subject information from disclosure. No information may be withheld under section 552.103 of the Government Code.

You assert that responsive information is excepted by section 552.107. However, you provide no comment indicating how this exception applies to any of the responsive information. We conclude that you have not demonstrated that any responsive information is excepted by section 552.107. Therefore, no information may be withheld under this section.

You also assert that the file is excepted from disclosure under section 552.108 of the Government Code. This section reads

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of

an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). In this case, you indicate that the requestor "has not yet exhausted all appellate and post conviction remedies." We deduce from this statement that the requestor was convicted. You indicate that the responsive information is a file "involving a criminal investigation." We cannot determine from your comments, or from the documents themselves, if this conviction is related to all or part of the submitted materials. Further, you have not shown that any of these materials are related to an ongoing investigation or prosecution. Therefore, the information may not be withheld under section 552.108(a)(1).

Subsections 552.108(a)(2) and 552.108(b)(2) except information in cases that have concluded with a result other than conviction or deferred adjudication. Based on your

representation that the requestor has not exhausted her appellate relief we find that the requestor was convicted. You have not indicated, and it is not apparent on the face of the submitted materials, which, if any, of the investigations represented in those materials did not result in conviction or deferred adjudication. We conclude that you have not demonstrated that the information is excepted from disclosure by subsection 552.108(a)(2) or 552.108(b)(2). Therefore, the information cannot be withheld under either of these subsections.

Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When this section is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). Whether disclosure of particular records will interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). As you do not explain how release of the responsive information would interfere with law enforcement, and it is not apparent on the face of the submitted information, we conclude that you have not demonstrated that section 552.108(b)(1) excepts this information from disclosure. Therefore the information cannot be withheld under section 552.108(b)(1).

Subsections (a)(3) and (b)(3) of section 552.108 except information from disclosure if the information is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental impressions or legal reasoning of an attorney representing the state. From our review of the submitted materials, we conclude that this information was not prepared by a prosecuting attorney and it does not reflect the mental impressions or legal reasoning of such an attorney. The responsive information may not be withheld under section 552.108(a)(3) or 552.108(b)(3). We conclude that none of the submitted information may be withheld under section 552.108. As none of the asserted exceptions have been shown to apply to the responsive information, it must be released to this requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If

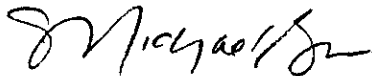
the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 136906

Encl Submitted documents

cc: Ms. Doris J. Queeglay
Rt. 2, Box 600
Marlin, Texas 76661
(w/o enclosures)